

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HOWARD LEMELSON
and
HELEN LEMELSON
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~XX~~ 22 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1967, 1968, 1969 and 1970.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of August, 1976, she served the within Notice of Decision by (certified) mail upon Howard Lemelson and Helen Lemelson (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Howard Lemelson
335 Jeffer Street
Ridgewood, New Jersey 07450
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ ~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of)~~ ~~XXXXXX~~ petitioner.

Sworn to before me this

23rd day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HOWARD LEMELSON
and
HELEN LEMELSON
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~20~~ 22 of the :
Tax Law for the Year(s) ~~1967, 1968, 1969 and 1970.~~ :
1967, 1968, 1969 and 1970.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 23rd day of August, 1976, she served the within
Notice of Decision by (certified) mail upon Morton Leben, CPA

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Morton Leben, CPA
450 Seventh Avenue
New York, New York 10001

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

23rd day of August, 1976.

Janet Mack

Catherine Steele



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 23, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Howard Lemelson
335 Jeffer Street
Ridgewood, New Jersey 07450

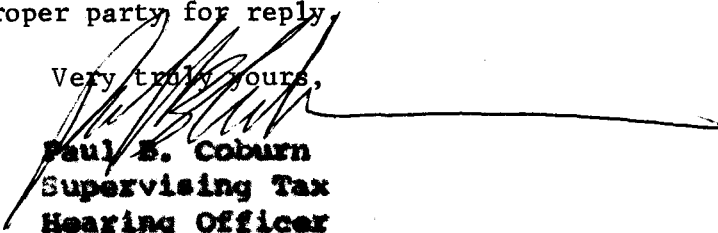
Dear Mr. & Mrs. Lemelson:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~20~~ **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,


Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
HOWARD LEMELSON	:	
and	:	
HELEN LEMELSON	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1967, 1968, 1969 and 1970.	:	

Petitioners, Howard Lemelson and Helen Lemelson, have filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967, 1968, 1969 and 1970. (File Nos. 9-33198703 and 0-69181370). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 24, 1975 at 10:45 A.M. Petitioners appeared by Morton Leben, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq. of Counsel).

ISSUE

Was all of the income received by petitioner, Howard Lemelson, from his activities as a professional engineer during the years 1967, 1968, 1969 and 1970, allocable to New York State?

FINDINGS OF FACT

1. Kallen & Lemelson filed New York State partnership returns for the years 1967, 1968, 1969 and 1970.

2. Petitioners, Howard Lemelson and Helen Lemelson, filed New York State nonresident returns for the years 1967, 1968 and 1969.

3. On September 28, 1970, petitioners, Howard Lemelson and Helen Lemelson, filed a claim for a refund for the years 1967, 1968 and 1969 allocating their net income to New York State as follows: 1967 - 77.92%; 1968 - 78.99% and 1969 - 80%. A Notice of Disallowance was issued March 15, 1971.

4. Petitioners, Howard Lemelson and Helen Lemelson, filed a New York State income nonresident return for the year 1970. The percentage of income allocated to New York State was as follows: salary - 73.57%; partnership - 67.86%.

5. On July 30, 1973, the Income Tax Bureau issued a Statement of Audit Changes for the year 1970 against petitioners, Howard Lemelson and Helen Lemelson. The aforesaid allocation of petitioner, Howard Lemelson, was disallowed on the grounds that no allocation of partnership income was made on the partnership returns, and that he failed to substantiate dates worked outside of New York State on his personal income tax return. Accordingly, a Notice of Deficiency was issued against petitioners in the amount of \$5,925.54, with interest of \$814.52 for a total of \$6,740.06.

6. During the years 1967, 1968, 1969 and 1970 petitioner, Howard Lemelson, was a partner in the engineering firm of Kallen & Lemelson. The office of said firm was located at 1271 Avenue of the Americas, New York, New York. During the years in issue, the partnership of Kallen & Lemelson was licensed to practice engineering

in the State of New York, but not in the State of New Jersey.

Howard P. Kallen was not licensed to practice professional engineering in the State of New Jersey. Petitioner, Howard Lemelson, was licensed to practice professional engineering in both the states of New York and New Jersey.

7. Mechanical Systems, Inc. is a New York corporation organized under the laws of New York in 1968 with a sole office located in the same suite of offices as that of the partnership at 1271 Avenue of the Americas, New York, New York. The principals of the corporation were the partners Kallen & Lemelson, and the work it engaged in was drafting exclusively for the partnership of Kallen & Lemelson. The corporation did not transact any business outside of New York State.

8. Petitioner, Howard Lemelson, resided at 335 Jeffer Street, Ridgewood, New Jersey. He maintained a den in his home which contained drafting boards and a rack for some plans. He did not have any shingle or telephone listing indicating that he, or the partnership of which he was a member, maintained an office at his home. Under the zoning laws of Ridgewood, New Jersey, special permits could not be granted for such an office.

9. Petitioner's claim of allocation of partnership income is based on the fact that his home was held out to be the office of the firm of Kallen & Lemelson because, under the law of New Jersey, there must be a New Jersey address in order to get the work engaged in by the firm for the State of New Jersey. Petitioner, Howard

Lemelson, claims that salary income should be allocated for work performed at various sites in New Jersey. He does not claim any allocation of salary income because of work performed at his home.

CONCLUSIONS OF LAW

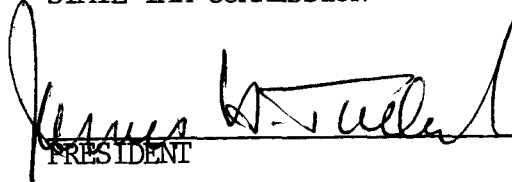
A. That the partnership of Kallen and Lemelson was not entitled to an allocation of income both within and without New York State during the years 1967, 1968, 1969 and 1970 because it never maintained a regular place of business outside of New York State during said years. Therefore, the petitioner, Howard Lemelson, was not entitled to an allocation of his distributive share of partnership income received from Kallen and Lemelson for said years. His home in New Jersey did not constitute a regular place of business of the partnership.

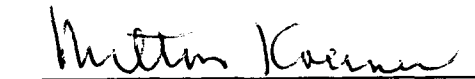
B. That petitioner, Howard Lemelson, did not render any services for Mechanical Systems, Inc., outside of New York State during the years in issue and, therefore, he was not entitled to an allocation of the income received from said corporation.

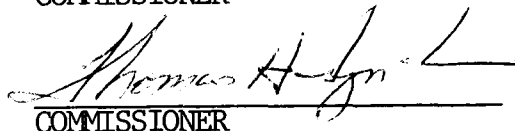
C. That the petitions of Howard Lemelson and Helen Lemelson are denied.

DATED: Albany, New York
August 23, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER